

identify the underlying Swiss application that is the priority document for the present application. However, Applicants will provide a supplemental declaration to address the noted deficiency and to acknowledge the foregoing amendments.

The four claims of this application were rejected as anticipated by WO98/33494 ('494). Claims 1-2 were rejected as anticipated by either EP0768,079 ('079), EP0955,051 ('051) or U.S. 5,945,409 ('409).

Independent claim 1 has been amended to clarify that the aqueous phase of the recited mixture is provided in an effective amount for adsorption of the tocopherol on the hair surface. As explained in the specification, the present invention is based upon the surprising finding that both of the recited components (water soluble procyanidins and oil soluble free tocopherols) have an affinity for hair and that the combination is bound to the hair and remains bound to the hair even during water rinsing. The combination of the recited components also endures the harsh treatment from hair drying and the application of other hair treatments without becoming unstable.

None of the art of record describes a composition capable of performing these functions as a hair treatment product. For instance, the '494 reference describes compositions for treating many symptoms and diseases associated with various medical conditions, but does not disclose or contemplate any treatment of the hair. Thus, while the '494 reference may disclose the use of Grape seed extract and Vitamin E, which are specific embodiments of Applicants' claimed mixture components, the reference does not disclose these materials in an effective amount for use as a hair treatment. More specifically, the '494 reference neither discloses nor contemplates the mixture of tocopherols and procyanidins in an effective amount for adsorption of the tocopherols on the hair surface, as recited in amended claim 1.

The '494 reference does not disclose or contemplate the weight percents recited in claim 2, or any weight percents that would be suitable for use as a hair treatment. Thus, the '494 reference cannot anticipate claims 1-4 because it fails to include a recited element of the claim. Moreover, there is nothing in the '494 reference that would suggest modifying the disclosed compositions or their use in

such a manner as to make the compositions effective for use as a hair treatment to achieve the surprising results noted by Applicants.

It is believed that claim 1 as amended is novel and non-obvious in view of the '494 reference. It is noted that dependent claims 3 and 4 were only rejected in view of the '494 reference. Thus, since the rejection based on the '494 reference has been traversed, and since dependent claims 3 and 4 are not subject to any other rejections, these claims should be allowable without regard to the following arguments with respect to the remaining cited references.

As noted above, claims 1-2 were rejected as anticipated by three additional references. The '079 reference discloses a hair growth stimulant. Thus, as explained in Test Example 4 (pages 11-12), the stimulant was prepared as a tonic and applied to the areas of male pattern baldness – i.e., directly to the scalp. Thus, the '079 reference does not disclose or contemplate a mixture of the components recited in Applicants' claim 1 in an effective amount for use as a hair treatment. More specifically, the '079 reference neither discloses nor contemplates the mixture of tocopherols and procyanidins in an effective amount for adsorption of the tocopherols on the hair surface, as defined in amended claim 1.

The '079 reference does not disclose or contemplate the weight percents recited in claim 2, or any weight percents that would be suitable for use as a hair treatment. Thus, the '079 reference cannot anticipate claims 1-2 because it fails to include a recited element of the claim. Moreover, there is nothing in the '079 reference that would suggest modifying the disclosed compositions, their weight percents or their use in such a manner as to make the compositions effective for use as a hair treatment to achieve the surprising results noted by Applicants.

While an English translation of the EP '051 reference has not been provided¹, it appears from the abstract that this reference concerns a cosmetic or dermatologic treatment. Thus, it appears that the '051 reference only concerns a topical treatment and not a composition provided in an effective amount for

¹ To the extent that rejections in view of this reference are maintained in a subsequent Office Action, it is requested that a translation be provided to enable Applicants to more fully respond to rejections based on this reference.

treatment of the hair. More specifically, it appears that the '051 reference neither discloses nor contemplates the mixture of tocopherols and procyanidins in an effective amount for adsorption of the tocopherols on the hair surface, as defined in amended claim 1.

Moreover, the '051 reference appears to only disclose tocopherol acetate. However, claim 1 requires a tocopherol in free form, which is contrary to the acetate form disclosed in the '051 reference. Thus, the '051 reference cannot anticipate claims 1 or 2 since it does not include certain elements of these claims.

Finally, the '517 Patent discloses a composition for the treatment of acne. It is clear that this reference only discloses an orally administered skin treatment tablets and not a treatment applied to hair. Since the recited text and table from the '517 Patent only discloses a tablet, it cannot meet the "aqueous phase" limitation of claim 1 and cannot anticipate this claim. Moreover, the '517 Patent does not suggest rendering its constituents in an aqueous phase. The only reference to a topical composition is in reference to using a known topical application in conjunction with the oral application constituting the invention of the '517 Patent.

The '517 Patent does not disclose or contemplate a mixture of the components recited in Applicants' claim 1 in an effective amount for use as a hair treatment. More specifically, the '517 Patent neither discloses nor contemplates the mixture of tocopherols and procyanidins in an effective amount for adsorption of the tocopherols on the hair surface, as defined in amended claim 1.

The '517 Patent does not disclose or contemplate the weight percents recited in claim 2, or any weight percents that would be suitable for use as a hair treatment. Thus, the '079 reference cannot anticipate claims 1-2 because it fails to include a recited element of the claim. Moreover, there is nothing in the '079 reference that would suggest modifying the disclosed compositions, their weight percents or their use in such a manner as to make the compositions effective for use as a hair treatment to achieve the surprising results noted by Applicants.

In summary, none of the art of record discloses or contemplates a mixture of the components recited in Applicants' claim 1 in an effective amount for use as a hair treatment. More specifically, none of these references discloses or contemplates the mixture of tocopherols and procyanidins in an effective amount for adsorption of the tocopherols on the hair surface, as defined in amended claim 1. Thus, none of the compositions disclosed in the cited art can accomplish the benefits afforded by the present claimed invention, namely a hair treatment that maintains its affinity to the hair even after rinsing, drying or subsequent hair treatments.

It is believed the present application, including claims 1-4, is in condition for allowance. Action toward that end is respectfully solicited. The Examiner is invited to contact the undersigned agent if it is believed that a telephonic interview would be helpful. Otherwise, Applicants request that this application pass to allowance in due course.

Respectfully submitted,



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COPY OF THE AMENDED SPECIFICATION

At page 1, replace the paragraph at lines 19-21 with the following:

Oligomeric procyanidins, isolated from grape seeds or other plant parts, are very good antioxidants, which are useful in cosmetics. Procyanidins are polyphenols on the basis of catechin [und] and epicatechin.

At page 2, replace the paragraph at lines 23-27 with the following:

The present invention is based [on] of the surprising finding that oligomeric procyanidins in an aqueous solution are stabilized by the addition of tocopherols, which are introduced into the aqueous solution by means of cosmetic solubilizers, such as PEG-40 hydrogenated castor oil. On the other hand, stability of the tocopherols is improved by the presence of oligomeric procyanidins.

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COPY OF THE AMENDED CLAIM

Please replace claim 1 with the following amended claim:

1. A hair treatment product for protecting hair against damage on heat drying, against environmental influences and hair treatments as well as for protecting other components of said hair treatment product against oxidation and degradation, said hair treatment product comprising [in] an aqueous phase of a mixture of (a) water soluble procyanidins and (b) oil soluble free tocopherols, [both components having an affinity to the hair] in an effective amount for adsorption of the tocopherols on the hair surface.

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